

## FIRST MEETING (PRIVATE).

*Held at Geneva on Thursday, September 1st, 1927 at 11 a.m.*

*President M. VILLEGAS.*

Present: All the representatives of the Members of the Council, and the Secretary-General.

## 1981. Adoption of the Agenda.

*Questions concerning the Free City of Danzig.*

On the proposal of the PRESIDENT, *the Council decided*, in view of the request submitted by Poland and Danzig through the High Commissioner, not to discuss at the present session. (1) the question of the Harbour Police, and (2) the question of the protection in Poland of the interests of Danzig nationals — Ruetzen-Kositzkau case.

*The Council took note* of the fact that direct negotiations on these two questions were still continuing between the two parties.

*Port d'attache for Polish Men-of-war at Danzig.*

The PRESIDENT reminded the Council that this question had been placed on the provisional agenda at the request of the Free City of Danzig. The Polish Government had stated in a note dated August 24th, 1927 that it was not able, within the period remaining before the opening of the present session of the Council, to give its views on the substance of this question. It asked, therefore, that it should be adjourned until the next session. In its note, the Polish Government had also referred to the rules of procedure adopted by the Council in the case of disputes between Poland and Danzig. The Free City had, however, in making its request, pointed out that these rules did not apply in the present case.

Dr. Sahn, President of the Senate of the Free City of Danzig, and Dr. van Hamel, High Commissioner of the League of Nations at Danzig, came to the Council table.

M. STRASBURGER said that he had given in his letter of August 24th, 1927 the reasons why the Polish Government asked for the adjournment of the question of the port d'attache for Polish men-of-war at Danzig until the Council's December session. The Polish Government had not been able, in the time at its disposal before the opening date of the present session of the Council, to adopt a definite view on the substance of the question raised by the Senate. The time allowed had been thirty days. According to the procedure applied as regards Danzig questions, however, these should be submitted to the Council forty days before the opening of the session. It was true that this procedure was applicable in the first place to appeals to the Council against decisions of the High Commissioner.

In the case in point, the matter did not concern an appeal but a question which had been before the Council for six years. The Polish Government thought that the same procedure should, by analogy be applied in the present case.

The Senate had pointed out that it would be possible to begin the discussion of the question on September 10th, in order to comply with the forty days regulation. M. Strasburger, however, would point out that the period of forty days must be counted from the beginning of the Council's session, because the preparations for dealing with the matter had to be made not in Geneva but on the spot.

He would add that the matter was not urgent, since it had been before the Council for five or six years. For the moment, the question should be examined once more and with great care. It had both legal and economic aspects. He thought it would be advisable also to discuss the question on the spot, perhaps under the guidance of the High Commissioner. For these reasons, he would ask the Council to place the question on the agenda of its December session.

Dr. SAHM, President of the Senate of the Free City asked the Council not to accede to the Polish Government's request.

With regard to the time-limit, he considered that such a regulation could not apply to a matter which had already been before the Council for so long. Further, the Polish Government had originally submitted the question directly to the Council, without previously communicating it to the High Commissioner at Danzig. It was for this reason that Dr. Sahn had considered that the period of three weeks which had been observed was sufficient. He would also point out that the Polish Government had been aware that it was the intention of the Free City to lay the matter before the Council, for the Senate had notified the Polish Government of this fact.

Dr. Sahn considered that an affirmative reply could be given to the question whether the matter was urgent, for any question contrary to the Constitution of the Free City which was protected by the League of Nations, was urgent, and the existence of a naval base in Danzig was contrary to that Constitution.

Dr. STRESEMANN attached considerable importance to the immediate discussion of this matter, and that for two reasons. The first was a reason of principle, which concerned neither the Free City nor the Polish Government, but the League of Nations itself. Public opinion had more than once accused the Council of invariably postponing difficulties or, rather, of adjourning questions which came before it, in order to avoid dealing with the difficulties. He was always reluctant to consent to adjournment, because he was well aware of the reproaches cast upon the Council on this account.

The second reason why he desired the matter to be discussed immediately was as follows: The whole question could be summed up as an interpretation of a single sentence. The Council had decided that Poland should continue to exercise its rights in the Port of Danzig until the port of Gdingen (Gdynia) had reached a sufficient state of completion. The only question at the moment, therefore, was to ascertain whether this port had reached a sufficient state of completion or not, and he thought that it would be easy for the representative of the Polish Government to reply to this question, even though the period of due notice had not yet expired. If the matter of due notice were pressed, the Council could always discuss the question after September 11th, for the statutory period of notice would then have expired.

It was for this reason that he would once more press for the immediate discussion of the matter, in order that the Council should avoid laying itself open to reproaches which would certainly be made if it now decided on a fresh adjournment.

M. STRASBURGER wished merely to repeat that the Polish Government was unable to submit at the moment the observations which it would have to make. It had been informed that the Free City of Danzig intended to raise the matter. The Polish Government, however, had not been warned before the time-limit of forty days had begun to run that the Senate of Danzig intended to bring up the matter at the present session. As far as the question itself was concerned, he would state that the matter was not as simple as Dr. Stresemann had maintained. It comprised legal, technical and economic aspects. He would emphasise especially the importance of the economic aspect. The men-of-war in Danzig were repaired in the dockyards of that city and this was one reason why they remained in the harbour. Consequently if those vessels were no longer to remain in Danzig, but were to be removed to Gdynia, the question would arise of transporting the dockyards from Danzig to Gdynia or of constructing new dockyards in the latter port. The matter was therefore complicated, and required detailed examination. As the President of the Danzig Senate had pointed out, Poland had submitted this question to the Council six years ago. He was consequently of the opinion that Poland had the right to state that, although on the present occasion she was not ready to bring the matter before the Council, she was prepared to do so in December, since her case was not yet ready. For these reasons, therefore, he was ready to discuss the matter in December, but he did not wish to begin a discussion when his Government was not in a position to submit its case.

Dr. STRESEMANN said that the Polish representative had pointed out that the question was far more complicated than he had thought. It was not merely a question of discovering whether the port of Gdingen was or was not in a sufficiently advanced state of construction, but also of dealing with the problem of the transfer of the naval dockyards to that port. In his view, this should not prevent the Council from discussing the problem and settling it. He felt sure that the Polish Government had views on the matter, and the Council could therefore still discuss it. Perhaps a certain effect would be produced in Danzig when it was realised that every difficulty and every problem was openly discussed by the Council. As far as he was concerned, therefore, he saw no reason why the matter should not be immediately discussed.

The PRESIDENT said that, after having heard the observations made, he, as Rapporteur, undertook to examine the question with the greatest good will. He would examine during the course of the session any suggestions made to the Council either in regard to the substance of the matter or in regard to the procedure to be followed.

*The proposal of the Rapporteur was adopted.*

*Polish Depot for Munitions and War Material in transit through Danzig ·  
Cancelling of the Council's Resolution of March 14th, 1924.*

The PRESIDENT reminded the Council that Sir Austen Chamberlain, President of the last session, had expressed his intention of asking the Council whether it desired to place on its agenda the question raised in the letter from the Danzig Senate dated July 25th, 1927, transmitted through the intermediary of the High Commissioner, in which the Free City asked the Council to revise the procedure concerning the dispute between the Free City of Danzig and the Polish Republic regarding the establishment of a Polish depot for munitions of war in the port of Danzig and to cancel the resolution adopted by the Council on March 14th, 1924. In the ordinary course of events, questions concerning Poland and Danzig were submitted to the Council either by an appeal from one of the parties concerned against a decision of the High Commissioner, in accordance with Article 39 of the Treaty between Poland and Danzig of November 9th, 1920, or at the request of the High Commissioner, who, by the terms of that article, was authorised to refer to the Council a dispute which had been submitted to him for decision. In

the present instance, there was no decision on the part of the High Commissioner, nor had he referred to the Council a dispute which had been submitted to him for decision.

The Polish Government had submitted a note dated August 11th, 1927 to which Danzig had replied by a second note dated August 19th, 1927. He asked the Council to decide whether it desired to place on its agenda the request contained in the note of the Danzig Government of July 25th, 1927.

M. STRASBURGER drew the Council's attention to the necessity of settling a preliminary question raised in the Polish Government's note of August 11th, 1927. The matter concerned the handing over of the peninsula of the Westerplatte in conformity with the Polish-Danzig Agreement of June 22nd, 1921, which laid down that a special area situated on the banks of the Vistula should be placed at the disposal of the Polish Government to permit of the landing and storing of munitions of war in transit for Poland.

In view of the fact that Poland and the Free City of Danzig had been unable to agree on the site for this purpose, the Council of the League, after having heard the views of the International Committee of Enquiry composed of four distinguished experts, had granted Poland the peninsula of the Westerplatte by the terms of a resolution which was unanimously adopted on March 14th, 1924. This resolution had been enforced, a special basin had been constructed. Now the Senate of Danzig requested the cancelling of this resolution without offering Poland any other site. The granting of the request would necessarily cancel the Polish-Danzig Agreement of June 22nd, 1921. The Council was therefore required to settle the two following preliminary questions: (1) Did the cancelling of the Polish-Danzig Agreement of June 22nd, 1921, come within the competence of the Council of the League? (2) Could the resolution of the Council of the League adopted on March 14th, 1924, based on this Agreement and already executed, be invalidated by the Council of the League without the consent of both parties?

In the view of the Polish Government, the Council of the League was not competent to consider such a request from the Free City. He would not refer for the moment to the procedure followed by the Senate, which had not been in conformity with the established regulations. He would ask, therefore, that the two preliminary questions which he had submitted should first be settled.

The PRESIDENT thought that the representative of Poland had raised a question of procedure which could be immediately discussed. He had also raised a question of substance which, in the view of the President, could only be discussed if the Council decided to put the matter on its agenda.

Dr. SAHM said that, in accordance with the President's suggestion, he would confine himself to the question of procedure. He reserved his right, however, to return to the question of substance when the discussion of the matter took place in public.

As far as procedure was concerned, a distinction must be made between two kinds of questions — disputes which followed the normal procedure laid down in Article 39 of the Polish-Danzig Treaty of Paris and questions submitted direct to the Council, such as the question of the "port d'attache" which the Polish Government had submitted direct to the Council. Dr. Sahm did not think that the Council could forward one of its decisions to the High Commissioner at Danzig with a request that he should modify or suppress it. In such cases, the Council alone was competent. The only thing that could be done would be to state that a difference existed between the two Governments, and this had been done in the present instance by means of an exchange of notes between Poland and the Free City of Danzig. At the moment, the dispute had been laid before the Council by the High Commissioner, and the Council was competent to settle it.

Dr. STRESEMANN said that one of the questions which had arisen was the following: Was it necessary first to bring a dispute before the High Commissioner or should the dispute be brought directly to the Council? It would be impossible to bring the dispute previously before the High Commissioner, if the explanations which the representative of the Polish Government had just furnished were exact. M. Strasburger had said that, in order to act on the request of the Free City of Danzig, it would be necessary to cancel a decision taken by the Council. Obviously the High Commissioner of Danzig was not competent to decide that such a decision should be cancelled. The High Commissioner was the authority who dealt with the matter in the first instance, and the Council dealt with the matter in the second instance. A Court of first instance could not cancel or modify decisions taken by the Council, which was a Court of second instance. For this reason, he considered that the Council was competent to deal with the question which had been brought before it.

M. PAUL-BONCOUR said that the representative of Germany had just stated very wisely that the moral authority of the League of Nations was endangered by the indefinite postponement of difficulties submitted to it. He agreed with that observation. The Council must, however, possess sufficient information to be able to settle these questions with full knowledge of the facts. In the Danzig Harbour questions, with which the Council had hitherto been asked to deal, the point to decide had been whether or not the Council would be able to receive the necessary information and whether the Polish Government would be in a position to furnish that information during the session in question. The matter now before the Council raised, on the contrary a serious point of principle. The representative of Germany had just stated that the moral authority of the League might be weakened if the Council postponed too readily the settlement of difficulties brought before it. Would not its moral authority be equally endangered if decisions previously taken were perpetually being questioned. In regard to the problem of the munitions depot on the Wester-

platte, which was vital for Poland, the Council was confronted by a previous decision. He accordingly thought that there was first of all a question of principle to be settled. Personally he was quite unable to deal with the question at the moment with the information at his disposal.

To what extent could previous decisions taken by the Council be revised? Was it true, as the representative of Poland had just said, that an agreement between the two interested parties was necessary before such decisions could again be raised before the Council? He did not know. The facts at his disposal did not enable him to decide. The first question which arose was legal. Were there in the documents of the case any data? No such data had been brought to his notice.

The representative of Germany had very justly observed, while trying to determine the competence of the High Commissioner of the League at Danzig, that the High Commissioner was in a way a Court of first instance and that appeal could be made to the Council, with whom the final judgment rested. Since the Council might be regarded as a kind of Court of appeal, it would follow that, when the Council had taken a decision, the Court of first instance could not revise that decision on appeal, if one of the parties for its own reasons asked for a revision of the decision. Nevertheless, in virtue of his post and of the moral authority which he had acquired over the two parties which were often in dispute, the High Commissioner of the League at Danzig was qualified, not to take a decision, but to give the Council the information which would enable it to judge whether or not it was advisable to re-examine its previous decision. Had the High Commissioner of the League given his opinion on this point? He had not found any such opinion in the documents. In these circumstances, he would ask that even on the question of placing the item on the agenda, quite apart from the question of deciding it, the information which was not yet at the disposal of the Council should be furnished.

The PRESIDENT said that, in view of the discussion which had just taken place, he thought that the best proposal he could make to the Council was to place the question on the agenda, as the only method of dealing with the question of procedure.

M. SCIALOJA thought that, before taking action on the Chairman's proposal, it would be well to send the previous question, that was to say the purely legal question, to a Committee of experts with a request for an opinion. He regarded the matter as of great importance from the legal point of view, because it involved the determination of the relations between the Council and the high-authorities at Danzig. In the first place, was the Council's previous decision, to which allusion had been made, judicial or arbitral or was it administrative or constitutional? In the case of Danzig these two matters were very easily confused. In the second place, if the Council's decision was judicial or arbitral, had the Council the right to reconsider the question? Surely the Council could only exercise a right of this kind on the ground that certain new facts had occurred, as was, generally speaking, the case in regard to all judicial or arbitral procedure. If, however, that decision was not judicial or arbitral, it was necessary to determine whether, from the constitutional or administrative point of view, the Council and even the High Commissioner were entitled to reconsider the question. M. Scialoja did not believe that the sole responsibility for re-opening the examination of a point, which had been decided, belonged to the higher authority which had taken that decision. If such authority were simply to state that its former decision was erroneous, that was a different matter. If, however, new facts had occurred, it would first be necessary to obtain a decision from the lower authority. That was at any rate the general principle admitted. Hence a number of very technical judicial questions would have to be examined from the general legal standpoint and from that of the Danzig Statute.

In conclusion, he thought that the members of the Council were not entitled to examine the question before making a preliminary study. He himself was a jurist, but nevertheless he felt the very greatest difficulty in coming to a decision on these problems. Consequently if the question were to be inserted on the agenda of that session, it would be better to set up at once a Committee of experts to give the Council an opinion on the point.

Sir Austen CHAMBERLAIN associated himself with what had been so well said by the honourable and learned representative of Italy. There had been passing through his mind in a vague and confused form some of the questions which M. Scialoja had so clearly expounded to the Council. Obviously the decision which the Council was asked to take was one of great general importance for the conduct of its business as well as of particular importance to the parties concerned in this particular case.

The representative of Italy had shown that there were points of difficulty to be determined, preliminary questions which had to be answered before the Council could wisely take a decision, even of a general character, as to the course of procedure that it would adopt in cases of this kind; but he had shown also that, in the particular case under review, the position was even more complicated by the agreements that had been made, and that it was necessary to examine the particular character of the decision of the Council and the agreements which preceded it and upon which it was founded. Sir Austen Chamberlain would therefore like to have the advice proposed by M. Scialoja before the Council took any decision whether it was competent to re-open this question, and whether, if so competent, it thought it right to do so.

M. TITULESCO was inclined to agree with M. Scialoja and Sir Austen Chamberlain on one condition. He thought that there was no need for the Council to solve a problem that was too general in character to help in the solution of a particular question. There was at the moment no question of framing a code expressing the force of the resolutions of the League, an abstract code from which might be inferred deductions applicable to all business. That, to his mind, would far

exceed both the Council's present task and its intentions. As to the Council's resolutions, the 1924 Protocol contained a provision that a topic which had already formed the subject of a unanimous resolution by the Council, accepted by one of the parties, could not be submitted to arbitration. This constituted the exception that had been made in 1924 to the principle of general compulsory arbitration, which was the ideal of all. There were countries which placed so much reliance on the Council's resolutions that they had waived their rights, believing that these resolutions could never be questioned.

The matter raised had certainly a technical aspect and to solve it the Rapporteur should be assisted by two experts or by two members of the Council with legal qualifications. He thought, moreover, that it was quite unnecessary to expand this previous question unduly.

Consequently he agreed with M. Scialoja and Sir Austen Chamberlain, provided it was understood that for the moment the Council would merely be required to solve a particular case and not to lay down principles from which the Council would have to make deductions affecting other business.

M. STRASBURGER understood that the representatives of Italy and the British Empire had proposed the appointment of a small Committee of Jurists to give the Council their opinion on the previous legal question.

He assented entirely to this procedure, and trusted that the question would be settled finally at the September session. The matter had come before the Council so often that Poland would be glad if it could be decided, once for all.

Dr. STRESEMANN pointed out the fundamental difference between the question of the "port d'attache" in which the issue was that of a decision taken by the Council laying down that certain changes would occur at a certain date, and the question now under review in which the Council was first asked to settle whether it was competent to discuss the point.

He assented to the proposal just made by the Italian representative that the matter should first be referred to a Committee of Jurists, and would reserve his observations on the substance of the question until the subject came up for discussion later.

Sir Austen CHAMBERLAIN drew the same distinction as that just drawn by the representative of Germany between the question of the "port d'attache" and this question. The decision on the "port d'attache" was provisional. The decision on the Westerplatte case bore no limit of time, and if the Council was to re-open a question which bore no limit of time, then it ought to be well advised as to the conditions under which it might take such action. Otherwise, all the decisions of the Council might be placed in doubt. Like the representatives of other countries, Sir Austen Chamberlain had received and obeyed decisions of the Council, and he might be greatly incensed if it were thought that, at any moment and without cause, the Council could be seized again of the same question and under the same conditions and asked to reverse its judgment. For this reason, he would not like to limit the experts to the special case now before the Council, but he would be glad of some guidance from them to help the Council in deciding any of the circumstances in which it would be free to renew such a discussion. The Council could then consider in what circumstances it might be wise to take such action, if that action were open to it.

M. TITULESCO said that his doubts could be satisfied in two ways. The first was that the action now being taken by the Council should be considered merely as applicable to a particular case. The second — and, to his mind, the better — would be to say that, in principle, the Council's resolutions were final and immutable, but at the same time to examine upon what conditions they could be modified in exceptional cases.

If the object of the discussion on the matter of principle were simply to study the circumstances in which a resolution could be modified in exceptional cases, while completely reserving his liberty of decision, he concurred in Sir Austen Chamberlain's proposal. That proposal dispelled his doubts, since the principle of the immutability of decisions was admitted.

M. BENES said that he had felt some alarm at the danger which the Council might incur if the question were not very carefully defined. However, after Sir Austen Chamberlain's explanations in which he concurred, he thought that the Council was covered and that it no longer ran the risk of being at any future time confronted with problems which it had already considered, and which it thought it had finally settled. This was indeed a very real risk, which might have extremely serious consequences for the work of the Council and of the League. He reiterated, however, that he was completely satisfied by Sir Austen Chamberlain's explanations.

The PRESIDENT understood that all members agreed with the ideas expressed by M. Scialoja and developed by the other speakers who had taken part in the discussion.

Accordingly if the Council agreed to place this item on its agenda with the object of immediately examining the question of principle raised by the Polish representative, he would suggest that the Committee of Jurists should consist of M. Scialoja, M. Adatci and M. Guerrero, with instructions to advise the Council and submit a report on the question of principle raised by the Polish representative.

M. SCIALOJA asked the President not to select the members of the Committee from among the Council, but rather to follow a practice that had frequently been adopted — namely to convene

some of those jurists who had already been requested to give an authoritative opinion on different questions of a similar kind. In this way no member of the Council would have to take part in drafting the report, so that all members would retain entire freedom of discussion.

It seemed probable that the question would prove a wide one, and he, personally desired to keep his freedom intact. The jurists' opinion would form one of the most important factors for the Council's decision, and M. Scialoja desired to remain completely free, which would be impossible if he took part in the preliminary work. He was, moreover, under the impression that the other members whom the President had mentioned shared his view.

M. ADATCI fully agreed with the President as to the necessity of appointing a Committee of legal experts, but he also shared M. Scialoja's view. The members of the Council should remain entirely unhampered in their judgment when the question came up again before the Council. He thought, accordingly that the Council would be wise to choose the Committee of Jurists among persons who were not on the Council.

M. GUERRERO agreed with M. Scialoja.

The PRESIDENT said that in these circumstances he proposed to invite each member of the Council to appoint, if he so desired, a jurist as member of the Committee. If the Council agreed, he would request members to acquaint the Secretary-General with their choice as soon as possible.

*The proposal was adopted.*

Dr. Sahn and Dr. van Hamel withdrew.

#### 1982. Resignation of M. Adolph Jensen and Dr. Alberto Pirelli from the Economic Committee.

Dr. STRESEMANN read the following draft report<sup>1</sup>.

" You have before you a letter from M. Adolph Jensen resigning his membership of the Economic Committee on the grounds of health. You have also a letter from Dr. Alberto Pirelli resigning from the same Committee as a result of his election as President of the International Chamber of Commerce.

" I feel that the Council will be unanimous in expressing its very sincere regret at the resignation of these two gentlemen. Their long service on the Economic Committee, their wide technical knowledge and very great experience in all economic questions, and the wholehearted support they have given to the work of this Committee have earned for them the esteem of their colleagues and the gratitude of the Council. The Council will no doubt wish to instruct the Secretary-General to express to M. Adolph Jensen and to Dr. Alberto Pirelli its appreciation and thanks for their devoted work on the Economic Committee and for the great services they have rendered to the League.

" The Council will certainly have noted with pleasure the intention expressed by Dr. Pirelli in his letter of promoting, in his new capacity as President of the International Chamber of Commerce, the continued co-operation of this important institution with the Economic Committee.

" With regard to the nomination of members to replace these two gentlemen, I think the Council will desire to postpone a decision until the question of the reorganisation of the Economic Committee has been considered by the Council. "

The PRESIDENT said that all members of the Council would share the regret expressed by the Rapporteur at the resignation of M. Jensen and Dr. Pirelli.

*The draft report was adopted.*

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## SECOND MEETING (PRIVATE, THEN PUBLIC).

*Held at Geneva on Friday, September 2nd, 1927 at 10.30 a.m.*

Present: All the representatives of the Members of the Council, and the Secretary-General.

#### 1983. Transfers in the Budget for 1927

M. COMNÈNE read the following report and draft resolution<sup>2</sup>.

" The memorandum submitted to us by the Secretary-General shows that, as a result of too close budgeting and of circumstances unforeseen when the budget was drawn up, the provision

<sup>1</sup> Document C. 421. 1927. II.

<sup>2</sup> Document C. 438. 1927. X.